

Modifying Order

98 F.T.C.

IN THE MATTER OF
GROLIER INCORPORATED, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5
OF THE FEDERAL TRADE COMMISSION ACT

Docket 8879. Order, March 13, 1978—Modifying Order, Dec. 10, 1981

This order reopens the proceeding and modifies the Commission's order issued on March 13, 1978 (91 F.T.C. 315; 43 F.R. 18652), by changing the disclosure requirements contained in Paragraphs II(A), (B), (D), and (E), so as to give respondents a choice of several approved methods of making required disclosures in advising those who reply to respondents' solicitations that they may be contacted directly by a salesperson; and allows sales personnel to present a business card containing prescribed information when making a sales visit.

ORDER MODIFYING CEASE AND DESIST ORDER

On August 13, 1981, the Commission issued an order denying respondents' motion to disqualify the Administrative Law Judge who rendered the Initial Decision in this proceeding. In its order, the Commission also invited the parties in this matter to file before the Commission their views as to whether the original Final Order of the Commission, 91 F.T.C. 315 (1978), should be modified to conform to the modified order in *Encyclopaedia Britannica*, 96 F.T.C. 778 (1980).

On September 30, 1981, respondents filed a response to the Commission's order. In this submission, respondents first proposed modifying the *Grolier* order to incorporate modifications made in *Britannica* on October 28, 1980. Second, respondents asked for guarantees that any future modifications in *Britannica* also be granted to respondents here. Third, respondents moved that the instant proceeding be stayed until the Commission takes action on a pending motion for further modifications in the *Britannica* order. Finally, respondents also seek a stay on the ground that a trade regulation rulemaking, rather than an adjudication, is the appropriate manner to conduct further proceedings involving *Grolier*.

Complaint counsel, on October 14, 1981, filed its answer to respondents' submission, pursuant to the August 13 order. Complaint counsel do not oppose modification of the *Grolier* order to conform with modifications already made in *Britannica*. But, they pose any assurances of future modifications on the ground that in the event of such modifications, the Commission's rules afford *Grolier* an appropriate procedural vehicle, Rule 2.51(b), by which *Grolier* may petition for further modifications in its order. An

assessment of whether further modifications should be made in either of the orders in question depends on facts and circumstances particular to the acts and practices of each company. Complaint counsel also oppose granting any stay in order to facilitate a conversion of this adjudication to a rulemaking proceeding.

The Commission agrees with the parties that the modifications in the *Britannica* order granted on October 28, 1980, should now be granted to Grolier. However, the Commission believes that the issue of further modifications in *Britannica* cannot now be resolved with respect to these respondents because the request for further modifications that Britannica made (and which we will allow Grolier to make) depends upon experience in complying with the first modification. See paragraphs 2 and 3, *infra*. Britannica has had this experience, but Grolier has not.¹ Moreover, Grolier has available to it a right to petition the Commission for reopening the *Grolier* matter should any further modifications in *Britannica* justify similar treatment of Grolier. Therefore, a stay of this matter pending further events in *Britannica* would be inappropriate.

Nor does the Commission believe a stay is justified pending resolution of this matter by an industrywide rulemaking proceeding. Respondents rely on *Ford Motor Co. v. FTC*, 654 F.2d 599 (9th Cir. 1981) for the proposition that rulemaking is preferable to adjudication where the Commission is attempting to change existing law or to establish rules of widespread application. In this matter the Commission did not engage in any novel interpretation of existing law as the court of appeals believed occurred in *Ford Motor Co.*, but rather the Commission declared practices to be unlawful that were established as violations of Section 5 of the FTC Act over a decade ago, see, e.g., *P.F. Collier & Son Corp. v. F.T.C.*, 427 F.2d 261 (6th Cir.), *cert. denied* 400 U.S. 926 (1970). It is true that issues of relief involving affirmative disclosures distinguish *Grolier* from earlier cases, but the crafting of relief is particular to the facts and circumstances of each case. In this instance, affirmative disclosures were ordered because of the Commission's experience that mere cease and desist order provisions were inadequate to remedy the abuses found to be in violation of Section 5, practices that had persisted over time, despite earlier prohibitive relief. *Grolier, Inc.*, 91 F.T.C. 315, 437, n.98. In this regard, the Seventh Circuit held, in a related case, that rulemaking was not required to replace adjudication where relief differed because "[a] prior insufficient order do

¹ Grolier's argument that it would be at a competitive disadvantage if the Commission does not now as Grolier it will receive all future modifications granted in *Britannica* is disingenuous. As matters now stand Britannica is bound by our order while Grolier is not. Grolier has offered no evidence that it is voluntarily complying with our order and until it does comply it probably has a competitive advantage.

FEDERAL TRADE COMMISSION DECISIONS

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not necessitate the insufficiency of all later orders." *Encyclopaedia Britannica, Inc. v. FTC*, 605 F.2d 964, 974 (7th Cir. 1979), *cert. denied*, 445 U.S. 934 (1980).

Therefore, it is ordered, That Paragraphs II(A), (B), (D), and (E) of the Order issued in this docket on March 13, 1978, shall be modified as follows:

1. Paragraph II(A) shall read:

A. Disseminating or causing to be disseminated any advertisement or promotional material which solicits participation in any contest, drawing or sweepstakes, or solicits any response to any offer of merchandise, service or information, unless any such solicitation clearly and conspicuously discloses that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondents' products, using one of the following disclosures:

1. IMPORTANT: This card will let you know of my interest and enable your [location designation, if appropriate] sales representatives to

(contact me at home) (information)
(call or visit me) with (details)
(contact me in person) (facts)
on how I may (purchase) [applicable product].
(buy)

2. IMPORTANT: Returning this card allows me to have your [location designation, if appropriate] sales representative to

(contact me at home) (information)
(call or visit me) with (details)
(contact me in person) (facts)
on how I may (purchase) [applicable product].
(buy)

3. IMPORTANT: Returning this card will enable your [location designation, if appropriate] sales representative to

(contact me at home) (information)
(call or visit me) with (details)
(contact me in person) (facts)
on how I may (purchase) [applicable product].
(buy)

on prior approval in writing of the Assistant Director of the Division of Compliance of the Bureau of Consumer Protection, or his designee, respondents may use any other disclosure that clearly and

conspicuously discloses that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondents' products. A request for approval shall be in writing and shall be deemed granted if not disapproved within 30 days after receipt by the Assistant Director of the Division of Compliance of the Bureau of Consumer Protection.

2. Paragraph II(B) shall read:

B. Providing any return card, coupon or other device which is used to respond to any advertisement or promotional material covered by Paragraph II(A) above, unless one of the disclosures set forth in such Paragraph, or a disclosure approved by the Assistant Director of the Division of Compliance or his designee as satisfying the requirements of Paragraph II(A), clearly and conspicuously appears in immediate proximity to the space provided for a signature or other identification of the responding party. During the one (1) year period from the date this Order becomes final, respondents may submit a request to reopen these proceedings pursuant to Section 2.51 of the Commission's Rules of Practice. Such petition shall contain information demonstrating that any proposed modifications of Paragraphs II(A) and II(B) will clearly and conspicuously disclose to potential purchasers of respondents' products that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondents' products. The foregoing sentence shall not be construed as a limitation of respondents' submission of additional information regarding the request to reopen, including information relating to the financial impact of Paragraphs II(A) and II(B) on respondents. Should a request be submitted, the Commission shall determine whether to reopen these proceedings within one hundred-twenty (120) days of receipt of such request. The procedure to reopen the proceedings as set forth herein is in addition to, and not in lieu of, any other procedure (or time period with respect to such procedure) permitted by law or the Commission's Rules of Practice.

3. Paragraph II(D) shall be amended by adding the following proviso at the end thereof:

Provided, however, That for one (1) year from the date this Order becomes final, respondents may, in lieu of the card required by this Paragraph of the Order, substitute a business card of at least 5 inches by 3½ inches containing only the following information:

1. the name of the corporation

2. the name of the salesperson
3. the term "sales representative"
4. An address and telephone number at which the corporation or salesperson may be contacted
5. the product or the corporation logo or identifying mark.

During this one (1) year period, respondents shall comply in all other respects with the requirements of Paragraph II(D) above. Prior to the expiration of the aforesaid time period, respondents may submit a request to reopen these proceedings pursuant to Section 2.51 of the Commission's Rules of Practice. Such petition shall contain information demonstrating that the business card required in Paragraph II(D), as modified above, is effective in communicating to potential purchasers, prior to the entry into their homes or places of business by any of respondents' sales representatives, that the purpose of the sales representatives' call is to solicit the sale of respondents' products. The foregoing sentence shall not be construed as a limitation on respondents' submission of additional information regarding the request to reopen, including information on the financial impact of Paragraph II(D) on respondents. Should a request be submitted, the Commission shall determine whether to reopen these proceedings within one hundred-twenty (120) days of receipt of such request. Respondents may continue to use the business card, as described by this proviso, during the time that a request to reopen these proceedings pursuant to this Paragraph is pending, and, if such proceedings are reopened, until the Commission determination of the matter has become final. The procedure to reopen the proceedings as set forth herein is in addition to, and not in lieu of, any other procedure (or time period with respect to such procedure) permitted by law or the Commission's Rules of Practice.

4. Paragraph II(E) shall be amended by striking the words "to direct each such person to read the information contained on such card." The amended Paragraph shall read:

E. Failing to give the card, required by Paragraph II(D), above, to each person and to provide each such person with an adequate opportunity to read the card before engaging any such person in any sales solicitation.

It is further ordered, That the foregoing modifications shall come effective upon service of this Order.

It is further ordered, That in all other respects, respondents' other requests are denied.

CREDIT CARD SERVICE CORP.

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Modifying Order

IN THE MATTER OF

CREDIT CARD SERVICE CORPORATION

MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 8861. Final Order, Jan. 19, 1973—Modifying Order, Dec. 14, 1981

This order reopens the proceeding and modifies the Commission's order issued on January 19, 1973 (82 F.T.C. 191; 38 FR 5157) by updating the "IMPORTANT NOTICE" contained in Paragraph 5 of the order, to reflect revisions to Regulation Z, altering the conditions of cardholder liability.

ORDER REOPENING THE PROCEEDING AND MODIFYING
CEASE AND DESIST ORDER

On August 14, 1981, the respondents, whose principal service is notification to credit card issuers that a subscriber's credit cards have been lost or stolen, filed a request that the Commission reopen the proceeding in the above docketed matter for the purpose of: (1) eliminating paragraph 5 of the Order of January 19, 1973, which requires that the IMPORTANT NOTICE as set forth therein be incorporated verbatim in all written advertisements disseminated by the respondents; (2) substituting in its place only "a general disclosure that the cardholder's liability is limited to \$50, but then only if the conditions imposed by Federal regulation are met by the card issuer"; and (3) deleting John P. Ferry as an individual respondent. Respondents also requested that the 30-day public comment period be waived.

By letter dated August 27, 1981, the Secretary informed the respondents that the Commission had denied their waiver request.

Paragraph 5 of the order reads as follows:

5. Failing to incorporate the following notice clearly and conspicuously in any written material offering the sale of respondents' credit card registration service to the public:

IMPORTANT NOTICE

Effective January 24, 1971, a Federal law provides that a cardholder has no liability for unauthorized use of his credit card unless all of the following four conditions are met. If the card issuing company (1) has notified you of your new limited liability, (2) has provided you with a pre-stamped envelope by which to notify them of a loss, (3) the card contains an approved method of identification, and (4) the use occurred before the card issuer is notified, then your liability is limited to \$50 per card.

Respondents state that the IMPORTANT NOTICE is no longer "a